

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FIREMAN'S FUND INSURANCE	)	
COMPANY,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 1:03-cv-01263-RLY-TAB
	)	
STEAKHOUSE OUTBACK,	)	
DAVID MARKLEY,	)	
LISA MARKLEY,	)	
FEDERAL INSURANCE COMPANY,	)	
CHUBB & SON, INC.,	)	
WACHOVIA INSURANCE SERVICES,	)	
INC.,	)	
DAVIS BALDWIN, INC.,	)	
	)	
Defendants.	)	

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FIREMAN’S FUND INSURANCE	)	
COMPANY	)	
	)	
Plaintiff,	)	
	)	1:03-cv-1263-RLY-TAB
vs.	)	
	)	
OUTBACK STEAKHOUSE INC., et al.,	)	
	)	
Defendants.	)	

**ORDER GRANTING PLAINTIFF’S MOTION TO LIFT STAY AND MOTION FOR  
LEAVE TO FILE AMENDED COMPLAINT**

To promote judicial economy, the Court on July 27, 2004 stayed the proceedings pending further order. [Docket No. 84]. The appeal of a \$39 million dollar negligence claim against Outback Steakhouse, Inc. (“Outback”), justified the stay. On July 15, 2005 the Court of Appeals affirmed the verdict. Outback Steakhouse of Florida, Inc., v. Markley, 831 N.E.2d 228 (Ind. Ct. App. 2005). Prior to this affirmation by the Indiana Court of Appeals, however, Plaintiff Fireman’s Fund Insurance Company (“FFIC”) filed a motion requesting that the Court lift the July 27, 2004 stay only to allow it to file a motion for leave to file an amended complaint. [Docket Nos. 85-86]. Co-Defendants Federal Insurance Company (“FIC”) and Chubb & Son Inc. (“Chubb”) object to these motions as premature. [Docket No. 87].

In compliance with the Court’s previous order, Defendants report further that the stay should remain in place pending Outback’s exhaustion of its appellate rights in the Markley appeal. [Docket Nos. 88-89]. Mindful of the challenge faced by Outback in its quest to challenge the \$39 million dollar verdict against it, and for the reasons set forth below, this Court

GRANTS Plaintiff's motions.

A court may use its discretion to determine whether to stay civil proceedings when the “interests of justice” require such action. Smith v. Bravo, 2000 WL 1051855, \*4 (N.D. Ill. 2000), citing Afro-Lecon, Inc. v. U.S., 820 F.2d 1198, 1202 (D.C. Cir. 1987). Likewise, Rule 15 of the Federal Rules of Civil Procedure permits a court to grant a party leave to amend pleadings freely “where justice so requires.” Fed. R. Civ. P. 15(a). It is the district court’s discretion to deny a Rule 15 motion where “undue delay, undue prejudice to the opposing party, or futility of the amendment” is apparent to the court. Thompson v. Boggs., 33 F.3d 847, 853 (7<sup>th</sup> Cir. 1994).

Only Chubb and FIC challenge FFIC’s motions. However, neither sufficiently demonstrates how FFIC’s Rule 15 motion would cause them undue delay or undue prejudice. The immediate reinstatement of the stay subsequent to FFIC’s filing of its amended complaint will sufficiently ameliorate any delay or prejudice to the parties. FFIC represents that this motion is essential to preserve its claims before the statute of limitations for such action runs. Although these Defendants raise a valid issue with respect to when FFIC’s action may accrue, their arguments fall far short of conclusively demonstrating that FFIC’s proposed amendment is futile. The Court is not persuaded by their arguments in that respect, and it can find no good reason to deny FFIC’s motions.

Accordingly, the Court overrules Chubb’s and FIC’s objections and grants FFIC’s motions to lift the stay for the limited purpose of filing its Amended Complaint. The Court further orders the parties to file with the Court a copy of the final decision in the Markley appeal that concludes all appellate rights, within 10 days of issuance, along with a statement regarding

the continuance or lifting of the stay.

Dated:

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